

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: BackYard Burgers, Inc. )  
 Dist. 5, Map 66D, Group D, Control Map 55D ) Madison County  
 Parcel 2.06 )  
 Commercial Property )  
 Tax Year 2005 )

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$184,300	\$232,100	\$416,400	\$166,560

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 19, 2006 in Jackson, Tennessee. The taxpayer was represented by registered agents Larry Berretta and David Young. The assessor of property was represented by staff appraiser Sherri Marbury.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a fast-food restaurant located at 821 North Parkway in Jackson, Tennessee.

The taxpayer contended that subject property should be valued at \$386,660. In support of this position, the cost approach was introduced into evidence.

The assessor contended that subject property should be valued at \$416,400. In support of this position, the cost approach was introduced into evidence. In addition, the assessor introduced the July 10, 2000 and October 24, 2005 sales of subject property for \$595,000 and \$755,000 respectively. Finally, the assessor entered into evidence building permits taken out between 1994 and 2002.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$416,400 based upon the presumption of correctness attaching to the decision of the Madison County Board of Equalization.

Since the taxpayer is appealing from the determination of the Madison County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization



Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the taxpayer's entire case consisted of the cost approach introduced into evidence as exhibit 1. For ease of reference, a copy of that exhibit has been appended to this order.

Respectfully, the administrative judge finds that the taxpayer's cost approach certainly constitutes a reasonable starting point. However, the administrative judge finds that exhibit 1 standing alone does not constitute sufficient evidence to even establish a prima facie case. The administrative judge finds the testimony contained no meaningful elaboration beyond what is stated in the exhibit.

Based upon the foregoing, the administrative judge finds the assessor could have moved for a directed verdict and it is not even necessary to address the assessor's proof.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$184,300	\$232,100	\$416,400	\$166,560

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:


1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or



3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of February, 2006.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. David Young  
Mr. Larry Berretta  
Frances Hunley, Assessor of Property

Estimate Number : 122  
 Estimate ID : BYB025  
 Property Owner : Back Yard Burger  
 Property Address : 821 North Parkway  
 Property City : Jackson - Madison County  
 State/Province : Tennessee  
 ZIP/Postal Code : 38301

Ex-1

## Section 1

## Occupancy

	Class	Height	Rank
100% Fast Food Restaurant	Wood or steel framed exterior walls	12.00	2.0
Total Area	: 2,600		
Number of Stories (Section)	: 1.00		
Perimeter	: 210		

## Components

	Units/%	Other
Sprinklers:		
Wet Sprinklers	100%	

Cost as of 01/2005

	Units/%	Cost	Total
Basic Structure			
Base Cost	2,600	72.66	188,916
Exterior Walls	2,600	10.19	26,494
Heating & Cooling	2,600	11.94	31,044
Sprinklers	2,600	2.85	7,410
Basic Structure Cost	2,600	97.64	253,864
Less Depreciation			
Physical & Functional	26.0%		66,004
Depreciated Cost	2,600	72.25	187,860
Miscellaneous			
Asphalt Paving	10,000	0.75	7,500
Total Cost	2,600	75.14	195,360

## ESTIMATE OF VALUE

LAND	184,300
IMPRV.	195,360
<b>TOTAL</b>	<b>386,660</b>